IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.50 OF 1995

The State of Maharashtra]
At the instance of Shri.S.D.]
Jagtap, Factory Inspector,]
Kalyan.]..Appellant
(Ori.Complainant)

Vs.

Shri.J.L.Mahajan, Manager of]
M/s.Albright Morarji & Pandit]
Ltd., M.I.D.C. Chemical Zone,]
Ambernath.]..Respondent
(Ori.Accused)

....

Shri.A.S.Shitole A.P.P. for the Appellant
Ms.Sharmila Kaushik for Respondent

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 7,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-State of Maharashtra challenges the judgment and order dated 17th September, 1994 passed by the learned Jt.Judicial Magistrate, F.C. Ulhasnagar in Summary Case No. 334 of 1989. By the said judgment and order, the learned Magistrate acquitted the respondent of the offence punishable under Section 3(A) of the Maharashtra Factories Rules punishable under Section 92 of the Factories Act.

2. The prosecution case briefly stated, is as under:

. That respondent no.1 Shri.J.L.Mahajan was the Manager of M/s.Albright Morarji and Pandit Ltd. which is situated at M.I.D.C. Ambernath. The complainant P.W.1 Shri.S.D.Jagtap was working as an Inspector of Factories at Kalyan during the period from 1988 to 1992. The factory was within his jurisdiction. The complainant visited the factory on 27th December, 1988. During the said visit, it was revealed that repairs of the roof like water proofing was carried out in March and May 1986. It is the prosecution case that though a Certificate of Stability was sent in 1984 as required under the law, no fresh Certificate of Stability was sent to the Chief Inspector of Factories after the said repairs. Thus, provision of Rule 3(A) of the Maharashtra Factories Rules, 1963 was contravened. Thus, a complaint came to be filed against the respondent.

3. The plea of the respondent-accused was recorded. The respondent pleaded not guilty to the said charge. The defence of the respondent-accused is that the Stability Certificate as required under

Rule 3(A) was taken in the year 1984 and it was valid for five years i.e. upto 1989. As the Certificate was valid upto 1989, they were not required to submit any fresh Stability Certificate. It is their defence that carrying out the water proofing work does not amount to repair of engineering construction as envisaged under the Rules.

4. The prosecution has examined the complainant P.W.1 Suresh Devrao Jagtap, P.W.2 Narayan Dattatrey Mahajan Deputy Chief Inspector of Factories and P.W.3 Vijay Ganpatrao Bhukavar who was the Joint Director Industrial Safety and Care at Thane. The main witness in the present case is complainant P.W.1 Suresh Devrao Jagtap. After going through all the evidence led by the prosecution, the learned Magistrate acquitted the respondent. Hence, this appeal.

5. I have heard Shri.A.S.Shitole, the learned A.P.P. for the appellant State and Ms. Kaushik for the Respondent. I have also perused the evidence on record as well as the judgment and order of the learned Sessions Judge. I am implicitly satisfied that the view of acquittal was not only a possible view but also a plausible one.

6. The prosecution case mainly rests on the evidence of the complainant P.W.1 Shri. Jagtap. At the relevant time, the complainant was working as Inspector of Factories at Kalyan. He has stated that on 27th December, 1988, he visited the factory premises. P.W.2 Narayan Dattatrey Mahajan who is the Deputy Chief Inspector of Factories, Thane was accompanying him at that time. Shri.Jagtap has stated that repair work to the roof and water proofing was carried out in the year 1986, however, after the said work was carried out, no test or examination were carried out by a competent person and fresh certificate of stability was not submitted as is required under the Act. In the cross examination, Shri.Jagtap has admitted that stability certificate is required in three cases viz. extension, alteration, repairing or addition of any work of engineering construction. Rule 3(A) of the Maharashtra Factories Rules 1963 reads as under:

. " No manufacturing process shall be carried out in any premises of a factory constructed, reconstructed or extended or in any premises which has been taken into use as a factory or part of a factory until a certificate of stability issued by a competent person in respect of every work of engineering construction in the Form I-A has been sent by the Occupier of

the factory to the Chief Inspector of Factories, and approved by him;

. Provided that, for the factories which are in existence on the date of the notification of rules, the certificate of stability in Form 1-A, may be sent to the Inspector of factories within three months from the date of notification.

. Provided further that no manufacturing process shall be carried out in any premises of a factory unless a fresh certificate of stability in Form 1-A is obtained from a competent person once in each period of five years or after extension, alteration, repairs or addition of any work of engineering construction or replacement or addition of machinery, plant, etc. and sent to the Chief Inspector."

7. Keeping the above provision in mind, I have examined the evidence of the complainant. Complainant Shri.Jagtap admitted in his cross examination that he has not examined any worker and that he had no evidence to show that when the water proofing of the Plant-II was done. He did not contact any witnesses or any person including Bhagwati Associates Pvt. Ltd. about the extent of water proofing done in the said factory. He has further admitted that he did not call or examine anybody from the Architect Association. On behalf of the respondents, it was submitted that doing water proofing of the roof would not amount to doing of any work of any engineering construction and

hence, no offence is made out. Moreover, it is submitted that it has not come on record as to in how much portion of the roof the water proofing was done. There appears to be considerable merit in the submission made on behalf of the respondents. The complainant is unable to state the extent of the repairs which were carried out. In my view minor repairs like waterproofing of the roof by putting tar as was done in the present case cannot amount to doing repairs of engineering construction. Thus, in the facts of the present case, the view taken by the learned Magistrate appears to be quite plausible.

8. It is well settled that if a view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view would be no ground to interfere. In this connection, there are no dearth of authorities but to eschew prolixity, I am referring to only a few of them i.e. **A.I.R. 1971 S.C. 66 Kheda Mohton and others Vs. State of Bihar, A.I.R. 1987 S.C.1083 Totasingh Vs. State of Punjab and 1997 (1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh.L.J. 770 that:-

> 12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs.State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajaib Singh,** where in para 7, Their Lorships of the Apex Court observed thus:-
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> " We agree that this Court is not precluded or the Court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a Court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the Court comes to conclusion that it was not, it can be reappreciation of evidence reverse the order".

9. In my view, the view of acquittal was a reasonable and possible view. There is no illegality in the judgment passed by the learned Magistrate. In the circumstances, I find no merit

in this appeal and the same is dismissed.

[V.K.TAHILRAMANI,J.]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.50 OF 1995

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.A.S.Shitole, A.P.P. for Appellant -State
Mrs.Sharmila Kaushik for Respondent.

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 7, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. In my view, the view of acquittal was a reasonable and possible view. There is no illegality in the judgment passed by the learned Magistrate. In the circumstances, I find no merit in this appeal and the same is dismissed.

(V.K.TAHILRAMANI,J.)